

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 823 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

PRABHUBHAI RATANJI PATEL

Versus

COMPETANT AUTHORITY & ADDL COLLECTOR

Appearance:

Kum. V.P.Shah, Advocate, for the Petitioner.

Shri A.G.Uraizee, Assistant Government Pleader, for Respondents Nos.1, 2 and 3.

Shri M.D.Pandya, Advocate, for Respondent No.4.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 08/08/96

ORAL JUDGEMENT

The order passed by the Competent Authority at

Surat (respondent No.1 herein) on 18th May 1990 under section 20 (2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 18th December 1990 in Appeal No.Surat-28 of 1990 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 cancelled the permission under section 21 (1) of the Act granted by the order passed on 15th July 1982 with respect to certain parcels of land bearing survey Nos.18/1 and 18/2 in all admeasuring 21040 square metres situated at Limbayat within the urban agglomeration of Surat (the disputed lands for convenience).

2. It is not necessary to set out in detail the facts giving rise to this petition. It will be sufficient to note that, by the order passed by respondent No.1 on 15th July 1982, the permission with respect to the disputed lands came to be granted under section 21 (1) of the Act on certain terms and conditions. Its copy is at Annexure-E to this petition. It appears that conditions attached to the grant of permission under section 21 (1) of the Act included obtaining of the N.A.Permission, obtaining of the permission from the Surat Urban Development Authority (respondent No.4 herein) and starting of construction activity within one year from the date of the order and its completion within five years from the date of the order. It appears that the petitioner could not start the construction work as he could not obtain the required permission from respondent No.4 and also what is popularly known as the N.A.Permission from the concerned officer easily and within reasonable time. The petitioner obviously could not complete the construction work within the stipulated time-limit of five years. It appears that one condition contained in the order at Annexure-E to this petition required the petitioner to submit a list of members enrolled for the Scheme sanctioned by the said order to respondent No.1. It appears that the list of members was also not submitted. Breach of all these conditions appears to have come to the notice of respondent No.1. A show cause notice thereupon came to be issued on 28th April 1986 and again on 8th March 1990 calling upon the petitioner to show cause why the permission granted by the order at Annexure-E to this petition should not be cancelled. A copy of the show cause notice issued on 8th March 1990 is at Annexure-M to this petition. The petitioner appears to have filed his reply thereto on 30th April 1990 and further reply on 8th May 1990. Thereafter, by the order

passed on 18th May 1990 under section 21 (2) of the Act, respondent No.1 cancelled the permission granted by the order at Annexure-E to this petition. Its copy is at Annexure-N to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Surat-28 of 1990. By the order passed on 18th December 1990 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-P to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-N to this petition as affirmed in appeal by the appellate order at Annexure-P to this petition.

3. The main ground on which the permission granted by the order at Annexure-E to this petition is cancelled is non-completion of the construction work within the stipulated time-limit of five years from the date of the order at Annexure-E to this petition. It transpires from the material on record that the petitioner was required to obtain what is popularly known as the N.A.Permission as well the Development Permission from respondent No.4. It transpires from the material on record that a lot of time was consumed in procuring these two permissions from respondent No.4 and the concerned Collector. It was obvious that the petitioner could not have started any construction work without obtaining the Development Permission from respondent No.4 and without obtaining the N.A.Permission from the concerned Collector in terms of the order at Annexure-E to this petition. It may be mentioned that, in view of the settled principle of law, after obtaining the Development Permission under section 29 (2) of the Gujarat Town Planning and Urban Development Act,1976, no N.A.Permission is required to be obtained. However, the petitioner need not be blamed for approaching the concerned Collector for obtaining the N.A.Permission as the order at Annexure-E to this petition stipulated such condition. It appears that the petitioner has not been able to complete the construction activity within the stipulated time-limit of five years partly for the reasons beyond his control.

4. In its ruling in the case of SUVARNABEN v. COMPETENT AUTHORITY & ADDITIONAL COLLECTOR (ULC) reported in AIR 1996 GUJARAT at page 13 this court has held that the condition regarding completion of construction work within the stipulated time-limit of five years to be directory and not mandatory. In that view of the matter, in exercise of its extraordinary jurisdiction under

Article 226 of the Constitution of India, the delay on the part of the landholder can be condoned by this court.

5. In its ruling in the case of GOVINDLAL CHUNILAL DALVADI v. STATE reported in 1994 (1) Gujarat Current Decision at page 526, this court has held that contravention regarding such condition of completion of the construction activity within the stipulated time-limit of five years can be condoned on imposition of suitable penalty.

6. As pointed out hereinabove, the petitioner could not complete the construction work within the stipulated time-limit of five years on account of circumstances beyond his control to some extent. So far as the condition regarding supply of the list of members is concerned, as transpiring from the impugned order at Annexure-N to this petition, he has submitted the list of only 124 members as against sanction of the Scheme for construction of 235 dwelling units. It may however be noted that the impugned orders at Annexures-N and P to this petition have been passed mainly on the ground of non-completion of the construction work within the stipulated time-limit of five years.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-N to this petition as affirmed in appeal by the appellate order at Annexure-P to this petition deserves to be quashed and set aside on condition of imposition of the overall penalty of Rs.1,00,000/= (rupees one lakh) to be paid by the petitioner on or before 31st December 1996 by means of an account payee cheque drawn in the name of the Secretary, Revenue Department, Government of Gujarat, Gandhinagar to be deposited with respondent No.1 herein failing which this judgment would automatically stand reviewed and the petition shall automatically stand rejected. On payment of the penalty amount, the petitioner would be in a position to start the construction activity on condition that he has to complete the construction work within three years from the date of commencement of such construction activity pursuant to this judgment of mine.

8. In the result, this petition is accepted to the extent indicated hereinabove. The order passed by the Competent Authority at Surat (respondent No.1 herein) on 18th May 1990 at Annexure-N to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 18th December 1990 in Appeal No.Surat-28 of 1990 at Annexure-P to this petition is quashed and set

aside on condition of payment by the petitioner the overall penalty in the sum of Rs.1,00,000/= (rupees one lakh) on or before 31st December 1996 by means of an account payee cheque drawn in the name of the Secretary, Revenue Department, Government of Gujarat, Gandhinagar to be deposited with respodnent No.1 herein failing which the consequences indicated hereinabove would ensue. The petitioner may be permitted to resume the construction activity only on payment of the aforesaid penalty amount. The petitioner shall be required to complete the construction work within three years from its resumption. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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